

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 500

BY JUDICIARY, RULES, AND ADMINISTRATION COMMITTEE

AN ACT

RELATING TO JURISDICTION IN INDIAN COUNTRY; AMENDING SECTION 19-5101, IDAHO CODE, TO REVISE A DEFINITION; AMENDING CHAPTER 51, TITLE 67, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 67-5104, IDAHO CODE, TO PROVIDE FOR STATE AND INDIAN TRIBAL COOPERATIVE LAW ENFORCEMENT.

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 19-5101, Idaho Code, be, and the same is hereby amended to read as follows:

19-5101. DEFINITIONS. As used in this act:

(a) "Council" means the Idaho peace officer standards and training council.

(b) "County detention officer" means an employee in a county jail who is responsible for the safety, care, protection, and monitoring of county jail inmates.

(c) "Law enforcement" means any and all activities pertaining to crime prevention or reduction and law enforcement, including police, courts, prosecution, corrections, probation, rehabilitation, and juvenile delinquency.

(d) "Peace officer" means any employee of a police or law enforcement agency which is a part of or administered by the state or any political subdivision thereof and whose duties include and primarily consist of the prevention and detection of crime and the enforcement of penal, traffic or highway laws of this state or any political subdivision. "Peace officer" also means an employee of a police or law enforcement agency of a federally recognized Indian tribe who has satisfactorily completed the peace officer standards and training academy and:

(1) Has been deputized by a sheriff of a county or a chief of police of a city of the state of Idaho;

(2) Is an employee of a police or law enforcement agency of a federally recognized Indian tribe that has elected, pursuant to section 67-5104, Idaho Code, to permit the police or law enforcement agency of the Indian tribe to enforce laws of the state of Idaho relating to public offenses committed within the exterior boundaries of such Indian tribe's reservation; or

(3) Is an employee of a police or law enforcement agency of a federally recognized Indian tribe that has entered into a cooperative law enforcement agreement with a county sheriff relating to the enforcement of state and/or tribal laws within the exterior boundaries of the Indian tribe's reservation.

(e) "Political subdivision" means any city or county.

1 SECTION 2. That Chapter 51, Title 67, Idaho Code, be, and the same is
2 hereby amended by the addition thereto of a NEW SECTION, to be known and
3 designated as Section 67-5104, Idaho Code, and to read as follows:

4 67-5104. STATE AND INDIAN TRIBAL COOPERATIVE LAW ENFORCEMENT. (1) As
5 used in this section:

6 (a) "Agreement" means such cooperative law enforcement agreements
7 between an individual Indian tribe and a county sheriff as they may deem
8 necessary or advisable for enhancement and effective law enforcement
9 of state laws within the exterior boundaries of the Indian tribal
10 reservation.

11 (b) "Indian tribe" means the individual federally recognized Indian
12 tribes in Idaho, specifically, the Coeur d'Alene tribe, the Kootenai
13 tribe of Idaho, the Nez Perce tribe, the Shoshone-Bannock tribes of the
14 Fort Hall reservation and the Shoshone-Paiute tribes of the Duck Valley
15 reservation.

16 (c) "Local law enforcement agency" means the sheriff of a county with
17 lands either wholly or in part located within the exterior boundaries of
18 the reservation of an Indian tribe.

19 (d) "Tribal peace officer" means an employee of a police or law
20 enforcement agency of an Indian tribe, whose duties include and
21 primarily consist of the prevention and detection of crime, and the
22 enforcement of traffic, highway, and other laws relating to public
23 offenses.

24 (2) It is the intent of the legislature to encourage Indian tribes
25 and local law enforcement agencies to negotiate and enter into agreements
26 that will enhance and improve the enforcement of Idaho state laws within
27 the exterior boundaries of Indian tribal reservations within the state of
28 Idaho. Such agreements may consist of such cooperative law enforcement
29 agreements as the respective Indian tribe and the respective sheriffs,
30 having the primary duty of enforcing all penal provisions of any and all
31 statutes of this state on lands within the exterior boundaries of the Indian
32 tribal reservations, may deem to be necessary or advisable. Nothing in
33 this act shall be construed or deemed to limit, impair or otherwise affect
34 the ability of Indian tribes and local law enforcement agencies to enter
35 into such cooperative law enforcement agreements within their respective
36 jurisdictions.

37 (3) An Indian tribe may elect to permit the police or law enforcement
38 agency of the respective Indian tribe to enforce laws of the state of Idaho
39 relating to public offenses committed within the exterior boundaries of such
40 Indian tribe's reservation. Provided however, the election to permit the
41 tribal police or law enforcement agency to enforce state law shall not be
42 effective, except as follows:

43 (a) The tribe making such election shall:

44 (i) One hundred eighty (180) days before the intended effective
45 date of such election, give written notice to the sheriff, county
46 commissioners and prosecuting attorney of each county with lands
47 within the exterior boundaries of the tribe's reservation, in
48 which county the tribe intends such election to be effective,
49 and to the director of Idaho state police, that the Indian tribe

1 has elected to permit and authorize its tribal peace officers to
2 engage in the enforcement of state laws with reference to persons
3 committing public offenses within the exterior boundaries of
4 such tribe's reservation, in accordance with, and subject to, the
5 provisions of this section; and

6 (ii) At the time of giving the notice set forth in paragraph
7 (a)(i) of this subsection, offer to enter into negotiation and
8 execution of agreements with the sheriff and county commissioners
9 and advising them of a date or dates available to meet for such
10 purpose, which initial date or dates shall not be more than thirty
11 (30) days from the date of giving such notice, except by agreement
12 of all parties. Thereafter, meetings and negotiations between
13 the parties shall continue, as agreed between the parties, with
14 the goal of achieving agreements, as defined herein, prior to the
15 intended effective date of the election set forth in paragraph
16 (a)(i) of this subsection. Provided however, the parties may
17 agree, in writing, to extend the intended effective date of the
18 notice of election provided herein.

19 To the extent that agreements entered into between the Indian tribe and
20 the local law enforcement agency expressly enlarge, diminish or limit
21 the authority granted to an Indian tribe, its tribal law enforcement
22 agency or its tribal peace officers pursuant to this section or other
23 state law, the terms of such agreements shall govern the authority
24 of the tribal law enforcement agency and its tribal peace officers
25 to enforce state laws within the exterior boundaries of the affected
26 Indian reservation.

27 (b) Unless otherwise limited by agreement between the Indian tribe and
28 the local law enforcement agency, on or before the intended effective
29 date of an Indian tribe's election as set forth in this section, or such
30 extended time as may have been agreed between the parties, such election
31 shall only be effective at such time as the Indian tribe shall:

32 (i) File with the county commissioners of each county with
33 lands within the exterior boundaries of said reservation, proof
34 of maintenance of comprehensive general liability insurance in
35 the minimum amount of two million dollars (\$2,000,000) for any
36 and all claims, losses, actions and judgments arising out of the
37 conduct of tribal peace officers resulting in damage to persons
38 or property acting under authority granted in this section. Each
39 county receiving the notice provided in paragraph (a) of this
40 section shall be a named insured on such policy, and such policy
41 shall not be subject to cancellation by the insurer without thirty
42 (30) days' notice to the tribal government and each named insured
43 thereon. Failure of the Indian tribe to maintain insurance as
44 set forth herein shall, on the effective date of cancellation or
45 expiration of the insurance required herein, nullify the election
46 by the Indian tribe to enforce laws of the state of Idaho relating
47 to public offenses committed within the exterior boundaries of
48 such Indian tribe's reservation.

49 (ii) Each policy of insurance issued pursuant to this section
50 shall include a provision that the insurance shall be available to

satisfy settlements or judgments arising from conduct of tribal peace officers when engaged in the enforcement of Idaho state laws, and that, to the extent of policy coverage, neither the tribal government nor the insurance carrier will raise a defense of sovereign immunity to preclude an action for damages under state or federal law, the determination of fault in a civil action, or the payment of a settlement or judgment arising from such conduct.

(4) If an Indian tribe has made the election to permit such tribe's police or law enforcement agency to enforce laws of the state of Idaho relating to public offenses committed within the exterior boundaries of such Indian tribe's reservation, on and after the effective date of such election as provided herein, the Indian tribe's tribal peace officers shall have all authority and duties given by Idaho law to peace officers of the state of Idaho, except as limited by agreement between the Indian tribe and the local law enforcement agency, only if:

(a) The tribal peace officer is the holder of a certificate from the Idaho peace officers standards and training council certifying that the employee has satisfactorily completed the basic patrol academy curriculum of the Idaho peace officer standards and training council academy; and

(b) The tribal peace officer has not been decertified by the Idaho peace officer standards and training council, pursuant to chapter 51, title 19, Idaho Code.

(5) A tribal peace officer authorized to enforce state laws under this section may only make an arrest in obedience to a warrant delivered to such officer, or such tribal peace officer may, without a warrant, arrest a person only:

(a) For a public offense committed or attempted in the officer's presence;

(b) When a person arrested has committed a felony, although not in the officer's presence;

(c) When a felony has in fact been committed and the officer has reasonable cause for believing the person arrested to have committed it; or

(d) When upon immediate response to a report of a commission of a public offense there is probable cause to believe that the person arrested has committed a violation of the provisions of section 18-902, Idaho Code (assault); section 18-903, Idaho Code (battery); section 18-918, Idaho Code (domestic violence); section 18-7905, Idaho Code (first degree stalking); section 18-7906, Idaho Code (second degree stalking); section 39-6312, Idaho Code (violation of a protection order); or section 18-920, Idaho Code (violation of a no contact order).

(6) The tribal peace officer making an arrest, with or without a warrant, for the commission of a public offense pursuant to statutes and laws of the state of Idaho, shall:

(a) Comply with all duties imposed on peace officers by the laws of the state of Idaho relating to arrest and custody, and the entitlement to judicial proceedings, by or on behalf of the person arrested, in a state court of competent jurisdiction;

1 (b) Immediately notify the office of the sheriff of the county wherein
2 the arrest occurred of:

3 (i) The fact of the arrest and identity of the person arrested;
4 and

5 (ii) The offense for which the person was arrested; and

6 (c) Deliver the person arrested to the place designated by the sheriff
7 within the county for booking and/or detention of such person; and

8 (d) Cooperate with investigative and judicial requirements related
9 to prosecution of the arrested person as may be reasonably required by
10 the respective county sheriff or prosecuting attorney, as the officers
11 having the primary duty of enforcing penal provisions of Idaho state
12 statutes and law.

13 (7) The authority granted to a tribal peace officer, pursuant to
14 this section, shall not extend beyond the exterior boundaries of the
15 Indian reservation. Provided however, a tribal peace officer may, without
16 unreasonable delay, pursue a person outside the boundaries of the Indian
17 reservation, and arrest, hold in custody, or issue a citation to such person
18 if such person committed a public offense within the exterior boundaries of
19 the reservation in the presence of the tribal police officer.

20 (8) A copy of any citation or notice of infraction issued or any
21 incident report taken by a tribal peace officer in the exercise of the
22 officer's authority pursuant to this section shall be submitted within two
23 (2) days following the action to the sheriff of the county in which the public
24 offense or infraction occurred.

25 (9) A tribal peace officer acting pursuant to the provisions of this
26 section shall not be considered to be an employee of the state of Idaho nor
27 of any county or city situated within the exterior boundaries of the Indian
28 reservation. The state of Idaho and its individual employees, and a county
29 or city, and the individual employees thereof, shall not be liable for the
30 authorization of tribal peace officers pursuant to this section, or for the
31 negligence or misconduct of any tribal peace officer. The authorization of
32 tribal peace officers under this section to permit such tribe's police or law
33 enforcement agency to enforce laws of the state of Idaho relating to public
34 offenses committed within the exterior boundaries of such Indian tribe's
35 reservation shall not be deemed to have been a nondelegable duty of the state
36 of Idaho or any local government therein.

37 (10) Nothing contained in this section shall be construed or deemed to
38 impair or affect the existing status and sovereignty of federally recognized
39 Indian tribes in the state of Idaho as established under the laws of the
40 United States.

41 (11) Nothing contained in this section shall be construed or deemed
42 to limit, impair or otherwise affect the existing authority under state or
43 federal law of state or local law enforcement officers to enforce state law
44 within the exterior boundaries of an Indian reservation. Authority granted
45 an Indian tribe by virtue of this section shall be concurrent only, and not
46 exclusive, with authority in the same matters existing in state or local
47 government.

48 (12) An Indian tribe that has made the election provided in subsection
49 (3) (a) of this section, and which election has become effective, may, upon
50 thirty (30) days' written notice to the sheriff of a county with lands within

1 the exterior boundaries of an Indian tribal reservation, terminate the
2 authority of its tribal peace officers or tribal law enforcement agency to
3 enforce penal laws of the state of Idaho within the exterior boundaries of
4 the Indian tribal reservation and within the county wherein such sheriff has
5 jurisdiction.

6 (13) This section may be cited and referred to as the "State and Indian
7 Tribal Cooperative Law Enforcement Act (SITCLEA)".